

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

FRANCES STEWART §
v. § CIVIL ACTION NO. 5:16cv20
JERRY BURGESS, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Frances Stewart, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of her constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Plaintiff's lawsuit named as defendants Bowie County Judge Ralph Burgess and District Attorney Jerry Rochelle. She asserted she was sentenced to 12 months in state jail on a charge which does not exist anywhere in the Bowie County District Clerk's Office. She asked for dismissal of the charges against her and the sealing of her criminal history.

The Magistrate Judge determined Plaintiff was challenging the validity of her conviction and the only available remedy for such a challenge is through habeas corpus rather than a civil rights lawsuit. On July 13, 2016, the Magistrate Judge issued a Report recommending the lawsuit be dismissed without prejudice to allow Plaintiff to seek relief through direct appeal or through state or federal habeas corpus proceedings.

The Magistrate Judge also observed Plaintiff was ordered to pay an initial partial filing fee of \$4.00, but failed to do so. This rendered her lawsuit open to dismissal without prejudice for failure to prosecute or to obey an order of the Court.

Plaintiff received a copy of this Report on August 5, 2016, but filed no objections thereto; accordingly, she is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjection-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the record in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law.") It is accordingly

ORDERED the Report of the Magistrate Judge (docket no. 12) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** so as to permit Plaintiff to seek relief through direct appeal or state or federal habeas corpus proceedings. It is further

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So ORDERED and SIGNED this 7th day of November, 2016.


ROBERT W. SCHROEDER III
UNITED STATES DISTRICT JUDGE